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Supreme Court of the United States.

OCTOBER TERM, 1957.

No. 925

CARMEN MÁRQUEZ ET AL.,
Petitioners,

v.

MARGARITA AVILÉS,
Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

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Supreme Court of the United States.

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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT.

SUPREME COURT OF PUERTO RICO
AGUADILLA PART

(Formerly District Court for the Judicial District of Puerto Rico, Aguadilla Part)

Order and Judgment

This case was called today for hearing on the motion filed by the defendant to dismiss the amended complaint filed herein.

The parties submitted said motion on its merits. The plaintiffs filed an amended complaint of filiation alleging in short that Carmen, Nemesio, José Antonio, Isabel, Wilson, Elba, and Edwin Márquez, who were born in Moca, in 1928, 1929, 1931, 1933, 1934, 1936 and 1940, respectively, are the illegitimate children (adulterous) of Narcisa Márquez and the late Bonifacio Avilés, and asking for the acknowledgment and partition of the properties of said decedent, and/or the share belonging to the plaintiffs on the properties left by said Bonifacio Avilés at his death in Moca, Puerto Rico, on March 18, 1954. Besides, on paragraph 4 of the amended complaint it is alleged that by judgment entered by the former District Court of Aguadilla, now Superior Court of Puerto Rico, Aguadilla Part, on August 22, 1945, in a case for support, it was determined that said Bonifacio Avilés was the father of the plaintiffs to the extent of his obligation to support them, and that said judgment is final and unappealable because it was affirmed by the Supreme Court of Puerto Rico, on July 14, 1946.

Section 2 of Act No. 229, of 1942, as amended by Act No. 243, of May 12, 1945, provides:

> "Section 2.—Children born out of wedlock prior to the date this Act takes effect, and who lack the qualifications of natural children according to previous legislation, may be recognized for all legal purposes by the voluntary action of their parents, and in their default, by that of the persons having the right to inherit therefrom. These children will be legitimized by the subsequent marriage of the parents to each other.
>
> "In case the children referred to in this Section are not recognized by the voluntary action of their parents, and in default of the latter, by that of the persons having the right to inherit therefrom, said children shall be considered as natural children for the

sole purpose of bearing the surname of their parents. The action for this recognition shall be prosecuted in accordance with the procedure fixed by the Civil Code of Puerto Rico for the recognition of natural children; *It being understood, however,* That such a recognition shall only have the scope herein expressed."

The amended complaint did not allege either that the decedent had acknowledged his alleged children in their records of birth, in his testament or in any other public instrument.

However, in their brief the plaintiffs cite, as applicable to them, Act No. 17 of August 20, 1952, with retroactive effect to July 25, 1952. This Court is of the opinion that said Act is not applicable to this case. The purpose of said Act is to implement the constitutional provision in connection with children born after July 25, 1952, date in which the Constitution of the Commonwealth of Puerto Rico took effect. Its purpose is to prove that after a child gets its filiation under the filiation laws now in force, he may have, as regards the properties left by his father, the same rights as his legitimate children. The Report of the Committee on the Bill of Rights of the Constitutional Convention reads in part: "For inheritance and property purposes future amendments to this section shall not be retroactive to births prior to its effectiveness." (See *Figueroa* v. *Díaz*, 75 P.R.R. 154, 180.) This Act has not repealed Act No. 229 of 1942, as amended in 1945, either expressly or implicitly.

WHEREFORE, the Court believes that it should sustain, as it hereby sustains, the motion to dismiss, because under Act No. 243 of May 12, 1945, illegitimate children, who are not natural children (in this case they were adulterous when born), and born before 1942 and not acknowledged by their father, and in lieu thereof by his heirs, do not

have a right to filiation and hence to a share in the properties left at his death by the alleged father, as prayed for in their complaint.

The amended complaint not being subject to a new amendment and the motion to dismiss having been sustained, the Court hereby enters judgment dismissing the amended complaint, with costs, without attorneys fees, on the plaintiffs.

Let the Clerk serve on the parties copy of this order and judgment.

Given in Aguadilla, Puerto Rico, and registered this 12th day of November, 1954.

(s) WILLIS RAMOS VÁZQUEZ,
Judge

I attest:
(s) LUIS R. ACEVEDO
Clerk of the Court

PUERTO RICO TRIAL COURT

SUPERIOR TRIBUNAL, AGUADILLA PART

Statement of the Case, Findings of Fact and of Law, and Judgment

Complying with the Judgment entered by the Supreme Court of Puerto Rico on September 6, 1955, in this case, reversing this Superior Court, further proceedings were had. The amended complaint was answered and the hearing was held on its merits on March 8, 1956. The parties appeared assisted by counsel and they presented both oral and documentary evidence. The case was submitted by the parties on the evidence presented by the plaintiffs, which the Court believes in its entirety. Weighing said evidence

and considering the admissions made by the defendant, this Court finds as follows:

Findings of Fact

1. Bonifacio Avilés died in Moca, Puerto Rico, on March 18, 1954.

2. Defendant Evarista Avilés, legitimate daughter of Bonifacio Avilés, also known as Margarita Avilés, before the judgment to be rendered in this case, was the sole and universal heir of said Bonifacio Avilés.

3. Carmen, born in Moca, on October 17, 1926; Nemesio, born in Moca, on March 3, 1928; José Antonio, born in Moca, on May 11, 1930; Ismael, born in Moca, on December 10, 1931; Elba Lydia, born in Moca, on August 22, 1937; Wilson, born in Moca, on August 14, 1938; and Edwin, born in Moca, also on August 14, 1938, all having the surname Márquez, were conceived through adulterous relations between Narcisa Márquez and said Bonifacio Avilés; during the pregnancy and at the time of the birth of each and everyone of the above children, Narcisa Márquez was known to be living in concubinage with said Bonifacio Avilés; and said children since they were born until February, 1941, were uninterruptedly enjoying the condition of natural children of his said father, justified by acts of the father himself, including acts of affection, payment of room, support, clothing, and medicines.

Findings of Law

According to Section 125 of the Civil Code of Puerto Rico (31 LPRA § 504) and according to said Judgment of the Supreme Court and the cases of *Cruz* v. *Andrini*, 66 P.R.R. 19; *Fernández* v. *Heirs of Fernández*, 66 P.R.R. 831; and *Montañez* v. *Rodríguez*, 67 P.R.R. 198, cited there-

in, the father or his heirs are bound to recognize his natural children when said children have uninterruptedly enjoyed the condition as of a natural child of said father, justified by acts of the same father or of his family, or when their mother was known to have lived in concubinage with the father during her pregnancy and at the time of the birth of the children.

Under Section 687 of the Civil Code of Puerto Rico (31 LPRA § 2263) and according to what has been decided in the cases of *Febre* v. *Febre*, 40 P.R.R. 208; *Gijón* v. *Surillo, et al.*, 31 P.R.R. 191; *Correa et al.* v. *Correa, et al.*, 18 P.R.R. 115 and *Ex Parte Smith, et al.*, 14 P.R.R. 643, the right to inherit is determined in accordance with the law in force at the time of the death of the person whose succession is in question.

Pursuant to the provisions of Act No. 17, approved on August 20, 1952 (31 L.P.R.A. § 441) which was in force as stated above at the time of the death of Bonifacio Avilés, all children have, with respect to their parents and to the estate left by the latter, the same rights that correspond to legitimate children.

JUDGMENT

For the reasons and grounds stated in the Statement of the Case and Findings of Fact and of Law issued in this case, which is attached to this judgment and made part thereof, the amended complaint filed in this case is hereby sustained, and it is decreed that plaintiffs Carmen, Nemesio, José Antonio, Ismael, Elba, Lydia, Wilson, and Edwin Márquez are the acknowledged illegitimate children of Bonifacio Avilés, with all the rights belonging to said children as such, including the right to inherit his father in a share equal to that of his legitimate daughter mentioned above, in the properties left by him at his death.

Costs and $1,000 for plaintiffs' attorneys fees are taxed on the defendant.

Let this judgment be registered and notified.

Given in Aguadilla, Puerto Rico, and registered this 10th day of May, 1956.

(s) WILLIS RAMOS-VÁZQUEZ
Judge

I attest:
(s) LUIS R. ACEVEDO
Clerk of the Court

SUPREME COURT OF PUERTO RICO

Judgment

CARMEN MÁRQUEZ et al., Plaintiffs-appellees, v. MARGARITA AVILÉS, Defendant-appellant,	)	No. 12,053 Appeal from the Superior Court, Aguadilla Part. Filiation

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San Juan, Puerto Rico, March 29, 1957

PER CURIAM: The record in this case having been examined and the questions raised by the parties in their briefs having been considered, this Court is of the opinion that the judgment of the lower court should be modified by striking therefrom: (1) the statement that Carmen, Nemesio, José Antonio, Ismael, Elba Lydia, Wilson, and Edwin Márquez are entitled to a share in the hereditary estate of

their father Bonifacio Avilés Pérez at his death and (2) the award of attorney's fees of $1,000.

Pursuant to § 2 of Act No. 229 of May 12, 1942, as amended, 31 L.P.R.A. § 502, children born out of wedlock prior to the effective date of that Act who were not acknowledged by the voluntary action of their parents, and in their default, by the persons having the right to inherit therefrom, shall be considered natural children for the sole purpose of bearing their father's surname. See *Cruz* v. *Andrini*, 66 P.R.R. 119 (1946); *Fernández* v. *Heirs of Fernández*, 66 P.R.R. 831 (1947); *Montañez* v. *Rodríguez*, 67 P.R.R. 198 (1947), and *Vargas* v. *Jusino*, 71 P.R.R. 362 (1950). Inheritance is a consequence of filiation and although § 1 of Act No. 17 of August 20, 1952 provides that "all children have, with respect to their parents and to the estate left by the latter, the same rights that correspond to legitimate children," this provision was approved solely for the purpose of enforcing the provisions of § 1 of the Bill of Rights of the Constitution of the Commonwealth of Puerto Rico which provides: "The dignity of the human being is inviolable. All men are equal before the law. No discrimination shall be made on account of race, color, sex, birth, social origin or condition, or political or religious ideas. Both the laws and the system of public education shall embody these principles of essential human equality." In the Report of the Committee of the Bill of Rights and in the debates of the Constitutional Convention it was clearly indicated that "for the purposes of inheritance and property, the changes resulting from this section (referring to § 1 of the Bill of Rights) *shall not be retroactive to births occurring prior to its effectiveness.*"* See *Diario de Sesiones, Procedimientos y Debates de la Convención Constituyente de Puerto Rico*, pp. 520-525.

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*[The quoted translation from the *Álvarez* v. *Álvarez* opinion is printed above as amended by the order of the Supreme Court of Puerto Rico of June 11, 1957.]

In the case at bar all of the plaintiffs were born prior to 1941, when their father Bonifacio Avilés Pérez was married to Josefa Cruz Barreto. Therefore, it is obvious that they can only be considered as natural children for the purpose of bearing their father's surname, since they were at no time acknowledged by the voluntary action of their father nor by that of the persons entitled to inherit from Bonifacio Avilés-Pérez.

As modified, the judgment appealed from will be affirmed.

(The Same Title)

Judgment

San Juan, Puerto Rico, March 29, 1957

For the reasons stated in the foregoing Per Curiam opinion, the judgment appealed from entered in the above-captioned case by the Superior Court, Aguadilla Part, on May 10, 1956, is hereby affirmed, being modified, however, to read as follows: "It is hereby declared that Carmen, Nemesio, José Antonio, Ismael, Elba Lydia, Wilson, and Edwin Márquez are all natural children of Bonifacio Avilés-Pérez, for the sole purpose of bearing their father's surname, with costs on the defendant, without attorneys fees."

It was thus decreed and ordered by the Court as witness the signature of the Chief Justice. Mr. Justice Negrón Fernández did not take part in the decision of this case.

(s) A. C. SNYDER
Chief Justice

I attest:
(s) Ignacio Rivera
Secretary

Opinion of the United States Court of Appeals For the First Circuit

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No. 5250.

CARMEN MARQUEZ ET AL.,
PLAINTIFFS, APPELLANTS,
v.
MARGARITA AVILES,
DEFENDANT, APPELLEE.

APPEAL FROM THE SUPREME COURT OF PUERTO RICO.

Before MAGRUDER, *Chief Judge*, and WOODBURY and HARTIGAN, *Circuit Judges*.

Bolivar Pagan for appellants.
Enrique Cordova Diaz, with whom *Manuel A. Garcia Mendez* and *Manuel A. Garcia Hermida* were on brief, for appellee.

OPINION OF THE COURT.

February 25, 1958.

MAGRUDER, *Chief Judge*. Appellants herein are seven persons all born between the period 1928-1940 as illegitimate children of an adulterous union between Bonifacio Aviles Perez and Narcisa Marquez. Appellee is the legitimate daughter of Bonifacio Aviles Perez and his wife Josefa Cruz Barreto, and is at present the sole and universal heir of Bonifacio Aviles Perez, who died in Puerto

Rico in 1954; that is, appellee is the sole universal heir, if appellants are not also lawful heirs of Bonifacio Aviles Perez, entitled to share in his hereditary estate.

A civil action for filiation was filed by appellants as plaintiffs in the Superior Court of Puerto Rico, Aguadilla Part, in which these illegitimate children sought a court decree declaring that the plaintiffs are the children of Bonifacio Aviles Perez, deceased, with hereditary rights over the properties left at his death.

On November 12, 1954, the Superior Court entered judgment dismissing the complaint in toto, although by Act No. 248, approved May 12, 1945, Laws of Puerto Rico 1945, p. 814, the plaintiffs, as children in fact of Bonifacio Aviles Perez, were entitled to a declaration that they were to be considered "as natural children for the sole purpose of bearing the surname of their parents". See *Cruz* v. *Andrini*, 66 P.R.R. 119 (1946); *Fernandez* v. *Heirs of Fernandez*, 66 P.R.R. 831 (1947). Accordingly, on appeal, the Supreme Court of Puerto Rico on September 6, 1955, reversed the judgment of the Superior Court and remanded the case to that court for further proceedings.

After such further proceedings in the Superior Court, that court on May 10, 1956, entered judgment declaring that the seven plaintiffs are the "acknowledged illegitimate children of Bonifacio Aviles, with all the rights belonging to said children as such, including the right to inherit [from] his father in a share equal to that of his legitimate daughter mentioned above, in the properties left by him at his death." Upon a second appeal of the case, the Supreme Court of Puerto Rico on March 29, 1957, entered judgment modifying the judgment of the Superior Court so as to declare merely that the seven plaintiffs "are all natural children of Bonifacio Aviles-Perez, for the sole purpose of bearing their father's surname," and as thus modified the judgment below was affirmed. Thus, as ap-

pears from an accompanying per curiam opinion by the Supreme Court of Puerto Rico, that court in effect struck from the judgment of the Superior Court the important provision declaring that the plaintiffs are heirs of Bonifacio Aviles Perez, entitled to share in his hereditary estate. From that judgment of the Supreme Court of Puerto Rico the seven original plaintiffs took the present appeal to this court.

Our jurisdiction of this appeal is based on 28 U.S.C. § 1293. Appellants seek to raise certain federal questions of due process of law and of equal protection of the laws. They also seek to raise certain questions of insular local law, as to which they say the judgment of the Supreme Court of Puerto Rico was "inescapably wrong".

This appeal is patently frivolous in so far as it seeks to torture the questions presented into federal constitutional questions. We have hitherto found it unnecessary to determine whether we should apply to Puerto Rico the due process clause of the Fifth Amendment or of the Fourteenth Amendment since July 25, 1952, when the status of Puerto Rico was changed to that of a commonwealth under the American flag. See *Mora* v. *Mejias*, 206 F.2d 377, 382 (C.A. 1st, 1953). Nor do we have to decide that question now. Appellants' due process argument assumes in their favor the very point of local law at issue, namely, whether under the law of Puerto Rico appellants have the legal status of heirs, entitled to share in the hereditary estates of Bonifacio Aviles Perez. Making that assumption, appellants say that they have a property right, of which they have been deprived by the Commonwealth of Puerto Rico acting through its judicial branch. But if that assumption is found to be incorrect, as a matter of local law, the appellants have obviously not been deprived of any property right without due process of law. Of course "due process of law does not mean infallible process of law", as Learned

Hand, J., observed in *Schechtman* v. *Foster*, 172 F.2d 339, 341 (C.A. 2d, 1949). It all gets back, then, to a question of local law as to what are the legal rights of appellants as illegitimate children of an adulterous union.

As to equal protection of the laws, this court had the following to say in *Stagg, Mather & Hough* v. *Descartes*, 244 F.2d 578, 583 (1957):

> "It is true that this court in due process cases has not yet found it necessary to decide whether the Fifth or the Fourteenth Amendment applies in Puerto Rico, and the Fifth Amendment, unlike the Fourteenth, has no equal protection clause. But Fifth Amendment due process covers at least some denials of equal protection, for the Supreme Court in *Bolling* v. *Sharpe*, 1954, 347 U.S. 497, 499, 74 S.Ct. 693, 694, 98 L.Ed. 884, after pointing out that both concepts stem from the American idea of fairness said:
>
> > 'The "equal protection of the laws" is a more explicit safeguard of prohibited unfairness than "due process of law," and, therefore, we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process.' "

In any event, it is manifestly impossible to make out a case of denial of equal protection of the laws here, for, as we held in *Everlasting Development Corp.* v. *Descartes*, 192 F.2d 1, 7 (1951), cert. denied 342 U.S. 954 (1952): "There must be a purposeful discrimination against one person and in favor of another person in like case, with no rational basis for a differentiation between the two." Appellants founded their claim of legal right upon a provision of § 1 of the Bill of Rights of the Commonwealth

Constitution, which became operative July 25, 1952, and upon Act No. 17 of August 20, 1952, Laws of Puerto Rico, Spec. Sess. 1952, p. 200, an act passed to implement the rights granted in the Commonwealth Constitution. The Supreme Court of Puerto Rico rejected this contention on the ground that all of the appellants were born prior to July 25, 1952. In this respect the court was merely applying to appellants the same rule of non-retroactivity which it had already applied to other persons born prior to the establishment of the Commonwealth, in *Alvarez* v. *Alvarez*, 77 P.R.R. 862 (1955), and in *Sanchez* v. *Diaz*, 78 P.R.R. 771 (1955). There has been no discrimination, "purposeful" or otherwise, between appellants and other persons "in like case".

There remains for consideration only the question of the correctness of the ruling of the Supreme Court of Puerto Rico as a matter of local law.

In *Figueroa* v. *People of Puerto Rico*, 232 F.2d 615, 618 (C.A. 1st, 1956), without deciding the point, we suggested the possibility that, when the Congress passed its joint resolution approving the constitution of the Commonwealth, 66 Stat. 327, which constitution in § 3 of Art. V provided that the Supreme Court of Puerto Rico "shall be the court of last resort in Puerto Rico", the Congress might be deemed to have thereby impliedly withdrawn from the Court of Appeals for the First Circuit "this anomalous vestige of federal jurisdiction over local law questions" as provided in 28 U.S.C. § 1293, with the gloss put upon that provision by *De Castro* v. *Board of Commissioners*, 322 U.S. 451 (1944), and cases cited therein. Though our technical jurisdiction to review local law questions has not been challenged in the present case, we are aware, of course, of the statement frequently made that a court sua sponte must always take note of its own lack of jurisdiction. If we were inclined to reverse the Supreme Court of

Puerto Rico upon a determination that its decision of a local law question was "inescapably wrong", we would certainly have to determine of our own motion whether we had any jurisdiction in the premises before we exercised such appellate power of reversal. But where, as in the present case, we are so clearly of opinion that the decision of the Supreme Court of Puerto Rico on a point of local law must be sustained, we are inclined, in the absence of challenge, to assume that our vestigial jurisdiction remains unimpaired, however much technical niceties might suggest that we ought not to make that assumption.

When Puerto Rico in 1952 became a commonwealth, under its own constitution, that change of status certainly reinforced and intensified the reasons of policy which led the Supreme Court, in *De Castro* v. *Board of Commissioners*, supra, to adhere to the self-denying ruling under which appellate federal courts were told that they ought not to reverse a judgment of the Supreme Court of Puerto Rico on a question of local law unless that judgment was deemed to be "inescapably wrong" or "patently erroneous".

It is difficult to imagine a matter of more exclusively local concern than the question of the right of illegitimate children to inherit property of a deceased resident of Puerto Rico. This has been a matter of constant insular preoccupation, tracing back to Spanish sources. It is a subject which has been full of perplexities and technicalities, as a casual reading of the innumerable decisions of the Supreme Court of Puerto Rico will attest.

As previously stated, appellants have based their case upon a provision of the Commonwealth Constitution which came into effect on July 25, 1952, and upon a legislative act passed later the same year to implement that constitutional provision.

Section 1 of Art. II of the Puerto Rican Constitution contains a general declaration, as follows:

> "The dignity of the human being is inviolable. All men are equal before the law. No discrimination shall be made on account of race, color, sex, birth, social origin or condition, or political or religious ideas. Both the laws and the system of public education shall embody these principles of essential human equality."

In conformity with the last sentence of the above constitutional provision, the legislature of Puerto Rico, in order to implement this declaration of equal rights, passed Act No. 17, approved August 20, 1952 (Laws of Puerto Rico, Spec. Sess. 1952, p. 200) reading:

> "Section 1. All children have, with respect to their parents and to the estate left by the latter, the same rights that correspond to legitimate children.
>
> Section 2. The provisions of this Act shall have retroactive effect to July 25, 1952."

It is to be noted that the general declaration of equal rights contained in § 1 of Art. II is silent on the question of its applicability retroactively to affect the status of persons born before the constitution came into effect. The Supreme Court of Puerto Rico declined to read the section in a vacuum, but recognized that its provisions were the final culmination of a long history of legislative changes in Puerto Rico.

Subject, of course, to the power of the legislature to change the rules retroactively, the Supreme Court of Puerto Rico has frequently noted that filiation rights of an illegitimate child are governed by the statutes in force at the date of the birth of such illegitimate child. See

Charres v. *Arroyo*, 16 P.R.R. 777 (1910); *Mendez* v. *Martinez*, 21 P.R.R. 238, 252, 256 (1914); *Morales* v. *Heirs of Cerame*, 30 P.R.R. 784 (1922); *Mercado* v. *Heirs of Mangual*, 35 P.R.R. 388 (1926); *Silva* v. *Doe*, 75 P.R.R. 198, 207 (1953); *Sanchez* v. *Diaz*, 78 P.R.R. 771, 776 (1955).

For present purposes we need not go further back than the Act of March 9, 1911. Laws of Puerto Rico 1911, p. 234. That Act inserted §§ 193-197 into the old Civil Code so as to introduce a distinction between illegitimate children of an adulterous union, and "natural children", defined as "those born out of wedlock, from parents who, at the moment when such children were conceived or were born could have intermarried with or without dispensation." Only "natural children", as defined, were given the capacity, by subsequent "recognition", to achieve the status of heir, entitled to share in the hereditary estate of their father. That distinction was carried over without change into §§ 125-129 of the Civil Code, as revised in 1930.

The next important change occurred in the enactment of Act No. 229, approved May 12, 1942, which provided, in part, as follows:

> "Section 1. All children born out of wedlock subsequent to the date this Act takes effect, shall be natural children, whether or not the parents could have married at the moment when such children were conceived. These children will be legitimized by the subsequent marriage of the parents, to each other.
>
> Section 2. Children born out of wedlock prior to the date this Act takes effect, and who lack the qualifications of natural children according to previous legislation, may be recognized for all legal purposes by the voluntary action of their parents, and in their default, by that of the persons having the right to inherit therefrom. These children will be legitimized

by the subsequent marriage of the parents, to each other."

Thus, as to children born out of wedlock subsequent to May 12, 1942, § 1 of Act No. 229 enlarged the definition of "natural children" so as to remove the barrier of adultery which theretofore had prevented subsequent acknowledgment for all legal purposes. Section 2 of the same Act did retroactively change the law applicable to a so-called "adulterine", born prior to May 12, 1942, so as to permit such a child to be acknowledged, for all legal purposes, by the "voluntary action" of the father, or in default thereof by the persons having the right to inherit from him; but it has long been settled that the "voluntary action" referred to must appear by a recordation, a will, or other public instrument. See *Correa* v. *Heirs of Piza*, 64 P.R.R. 938 (1945); *Cruz* v. *Andrini*, 66 P.R.R. 119, 121-22 (1946). It is not claimed by appellants that there was ever any such acknowledgment by "voluntary action" in the case at bar. Thus it is clear that if the inheritance rights of appellants are governed by the statute law in force at the date of their respective births (1928-1940), they are not entitled as heirs to share in the hereditary estate of their father, Bonifacio Aviles Perez.

We have already referred to Act No. 243, approved May 12, 1945, Laws of Puerto Rico 1945, p. 814. That Act amended § 2 of Act No. 229, approved May 12, 1942, so as to add a paragraph providing that "adulterine" children born out of wedlock prior to May 12, 1942, who had not been recognized by the "voluntary action" referred to, should nevertheless "be considered as natural children for the sole purpose of bearing the surname of their parents. The action for this recognition shall be prosecuted in accordance with the procedure fixed by the Civil Code of Puerto Rico for the recognition of natural chil-

dren; *It being understood, however,* That such a recognition shall only have the scope herein expressed."

This brings us to the general declaration of equal rights contained in the Bill of Rights of the Puerto Rican Constitution, above referred to. Was this declaration intended to be prospective only, or was it intended to apply retroactively to enlarge the inheritance rights of persons born before the constitution came into effect? As above noted, § 1 of Art. II of the constitution was silent in this respect. Accordingly, the Supreme Court of Puerto Rico felt obliged to examine into the history of the adoption of this provision by the constitutional convention. In this respect, in the per curiam opinion in this case, the Supreme Court of Puerto Rico had the following to say:

> "In the Report of the Committee of the Bill of Rights and in the debates of the Constitutional Convention it was clearly indicated that 'for the purposes of inheritance and property, the changes resulting from this section (referring to § 1 of the Bill of Rights) *shall not be retroactive to births occurring prior to its effectiveness.*' See *Diario de Sesiones, Procedimientos y Debates de la Convencion Constituyente de Puerto Rico,* pp. 520-525."

Consequently, the Supreme Court of Puerto Rico concluded that appellants could only be "considered as natural children for the purpose of bearing their father's surname, since they were at no time acknowledged by the voluntary action of their father nor by that of the persons entitled to inherit from Bonifacio Aviles-Perez." In thus construing a provision of their local constitution, the Supreme Court of Puerto Rico was only adhering to a construction which it had already made in similar cases, in *Alvarez* v. *Alvarez*, 77 P.R.R. 862 (1955), and in *Sanchez* v. *Diaz*, 78 P.R.R. 771 (1955).

The action of the legislature of Puerto Rico in passing the implementing Act No. 17, approved August 20, 1952, was entirely consistent with this construction given the constitutional provision, for § 2 of Act No. 17 expressly provided that the provisions of this Act "shall have retroactive effect to July 25, 1952", the date on which the constitution became effective.

We mention briefly one point raised by appellants which the Supreme Court of Puerto Rico evidently did not consider of sufficient merit to comment upon. Appellants refer to the provision of § 687 of the Civil Code of Puerto Rico reading: "In order to determine the qualification of the heir or legatee, the time of the death of the person whose succession is in question shall be taken into consideration." They then point out that Bonifacio Aviles Perez did not die until 1954. But it is quite apparent from an inspection of the text, especially the second paragraph of § 687, that that section refers only to the preceding § 685, which prescribes the cases in which a person, admittedly an heir, may be disqualified from taking property by inheritance. As to the circumstances under which an illegitimate child may by recognition acquire the status of an heir, we have to look to the earlier sections of the Code.

All in all, it is obvious that we could not possibly hold the judgment of the Supreme Court of Puerto Rico to be "inescapably wrong" or "patently erroneous" in declaring the local law to be as above indicated.

A judgment will be entered affirming the judgment of the Supreme Court of Puerto Rico.